

HONORABLE ROBERT S. LASNIK

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JASON MOOMJY, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

HQ SUSTAINABLE MARITIME  
INDUSTRIES, INC., NORBERT SPORNS,  
and JEAN-PIERRE DALLAIRE,

Defendants.

No. 11-cv-0726-RSL

**MOTION OF STEVE PURCELL FOR  
APPOINTMENT OF LEAD PLAINTIFF  
AND APPROVAL OF SELECTION OF  
LEAD COUNSEL; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Note on Motion Calendar: July 15, 2011

Oral Argument Requested

MOTION OF STEVE PURCELL FOR APPOINTMENT OF LEAD  
PLAINTIFF AND APPROVAL OF SELECTION OF LEAD  
COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT THEREOF  
No. 11-cv-0726-RSL

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Under § 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), Steve Purcell, a shareholder of Defendant HQ Sustainable Maritime Industries, Inc. (“HQS”) and a member of the putative class in this action, moves this Court for an order:

- (1) Appointing Purcell as Lead Plaintiff;
- (2) Approving Purcell’s selection of Chapin Fitzgerald Sullivan & Bottini LLP as Lead Counsel; and
- (3) Granting such other and further relief as the Court deems just and proper.

Purcell makes this motion based on the grounds that (1) he has suffered a recoverable loss of approximately \$67,100.00 in connection with his purchases of 20,000 shares of HQS stock between May 11, 2009 and April 1, 2011; and (2) he satisfies the requirements of Federal Rule of Civil Procedure 23 because his claims are typical of the claims of other class members and because he will fairly and adequately represent the interests of the class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

This motion is based upon the following Memorandum of Points and Authorities, the accompanying Declaration of William R. Spurr and exhibits, all other papers and proceedings in this action, and such other written or oral argument the Court may consider in deciding this motion. A proposed order regarding the Lead Plaintiff and Lead Counsel appointments is attached to this motion.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This is a securities fraud class action brought on behalf of persons who purchased HQS stock between May 11, 2009 and April 1, 2011 (the “Class Period”). Steve Purcell, who suffered substantial losses as a result of his purchase of 20,000 shares of HQS common stock during the Class Period, moves to (1) appoint him as Lead Plaintiff; and (2) approve his selection of counsel, Chapin Fitzgerald Sullivan & Bottini LLP, as Lead Counsel.

The Court should apply the three-step process under § 21D(a)(3)(B) of the Exchange Act, as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), and appoint Purcell as Lead Plaintiff because:

- Purcell has timely made a motion for lead plaintiff appointment;
- he is the presumptive lead plaintiff since he has lost approximately \$67,100.00 as a result of the misrepresentations and omissions alleged in this action and, to the best of his knowledge, he has the largest financial interest in the relief sought by the class; and
- he meets the typicality and adequacy of representation requirements under Federal Rule of Civil Procedure 23.

See 15 U.S.C. § 78u-4(a)(3).

Furthermore, the Court should approve Purcell’s selection of the law firm of Chapin Fitzgerald Sullivan & Bottini LLP as Lead Counsel because the firm specializes in securities litigation, has a demonstrated record of success in litigating securities class actions, and is thus well qualified to represent the class of HQS shareholders.

Accordingly, the Court should grant Purcell’s motion in its entirety.<sup>1</sup>

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<sup>1</sup> The motion does not seek consolidation of related actions because this is the only securities class action pending in this District arising from HQS’s false and misleading statements made during the Class Period. In the event that similar actions are filed in or transferred to this District, the Court should consolidate these actions under Federal Rule of Civil Procedure 42(a) and 15 U.S.C. § 78u-4(a)(3)(B)(ii). *Investors Research Co. v. United States Dist. Ct.*, 877 F.2d 777, 777 (9th Cir. 1989) (the “district court has broad discretion . . . to consolidate cases”).

## II. STATEMENT OF FACTS

According to the complaint dated April 28, 2011, HQS is a Seattle-based aquaculture and aquatic product processing company. During the Class Period, two HQS officers, Defendants Norbert Sporns and Jean-Pierre Dallaire, issued false and misleading statements about HQS's business, operations, and management, causing HQS common stock to trade at artificially inflated prices – at a Class Period high of nearly \$10.00 a share. But the truth of HQS's financial condition emerged on April 1, 2011, when the public learned that HQS failed to file its financial statements in compliance with federal laws. HQS's stock price closed at \$2.78 per share that day. Since then, the trading of HQS stock has been suspended for failure to comply with listing standards.

News about HQS only got worse after April 1, 2011. On April 6, Andre Intrader, an HQS board member and the chairman of its audit committee, announced that he felt “compelled by conscience” to resign his positions with HQS. And HQS retained the law firm of Latham & Watkins to conduct an internal investigation regarding its accounting irregularities. To date, the internal investigation remains pending, and HQS remains out of compliance with listing standards.

Following these announcements, Plaintiff Jason Moomjy filed this action alleging violations of Sections 10(b) and 20(a) of the Exchange Act. On April 28, 2011, a notice of the pendency of this action was published on Business Wire. *See* Declaration of William R. Spurr (“Spurr Decl.”) Ex. A.

Within 60 days after the publication of this notice, Purcell moves for lead plaintiff appointment on June 27, 2011.

### 1 **III. ARGUMENT**

#### 2 **A. The Court Should Appoint Purcell As Lead Plaintiff Because He Is** 3 **The “Most Adequate Plaintiff”**

4 The PSLRA provides a rebuttable presumption that the most adequate plaintiff in  
5 any securities fraud class action is the person or group of persons that:

- 6 • has either filed the complaint or made a motion in response to a notice;
- 7 • in the determination of the court, has the largest financial interest in the relief sought by the class; and
- 8 • otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

9 15 U.S.C. § 78u-4(a)(3)(B)(iii). Here, Purcell meets each of these three requirements.

#### 10 **1. Purcell’s Motion Is Timely**

11 Because the Business Wire notice regarding the pendency of this action was  
12 published on April 28, 2011, the 60-day period in which class members may move to be  
13 appointed lead plaintiff under 15 U.S.C. § 78u-4(a)(3)(A)(II) expires on June 27, 2011. *See*  
14 *Spurr Decl. Ex. A* at 1. Thus, Purcell’s motion is timely. In addition, Purcell has retained  
15 competent counsel to represent him and the class. *See Spurr Decl. Ex. D*. Purcell thus  
16 satisfies the individual requirements of 15 U.S.C. § 78u-4(a)(3)(B) and is entitled to have  
17 his application for appointment as lead plaintiff and approval of lead counsel considered  
18 by the Court.

#### 19 **2. Purcell Is the Presumptive Lead Plaintiff**

20 The PSLRA requires the Court to appoint a “lead plaintiff” in securities class actions.  
21 15 U.S.C. § 78u-4(a)(3)(B)(i). The “lead plaintiff” is “the member or members of the  
22 purported plaintiff class that the [C]ourt determines to be most capable of adequately  
23 representing the interests of class members.” *Id.* To identify the presumptive “most  
24 adequate plaintiff,” the Court must first determine which member or group of members of  
25 the class has the largest alleged loss. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb); *see In re*  
26 *Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002).

As demonstrated in Purcell's certification, he purchased 20,000 shares of HQS common stock during the Class Period. *See* Spurr Decl. Ex. B at 2. As a result of these purchases, Purcell suffered approximately \$67,100.00 in damages. Spurr Decl. Ex. C. To the best of his knowledge, Purcell does not know of another HQS shareholder who is seeking lead plaintiff appointment and who has suffered a higher amount of damages. Thus, Purcell is qualified to become the presumptive most adequate plaintiff. *See Cavanaugh*, 306 F.3d at 730; *see also Armbruster v. Celcyte Genetics Corp.*, No. 08-cv-0047-RSL, 2008 U.S. Dist. LEXIS 96288, at \*6 (W.D. Wash. Apr. 28, 2008) (Lasnik, J.) (finding the persons with the largest loss as the presumptive lead plaintiffs).

### 3. Purcell Satisfies the Requirements of Rule 23

The PSLRA requires that lead plaintiffs, in addition to having the largest financial interest, must "satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). Rule 23(a) requires that: (1) the class be so numerous that joinder of all members is impracticable; (2) there be questions of law or fact common to the class; (3) such claims be typical of those of the class; and (4) the representatives fairly and adequately protect the interests of the class. FED. R. CIV. P. 23(a). In deciding a lead plaintiff motion, courts limit their inquiry to the typicality and adequacy prongs of Rule 23(a). *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659, 666 (C.D. Cal. 2005) (citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 263 (3d Cir. 2001)).

The typicality requirement of Rule 23(a)(3) is satisfied when: (1) the named plaintiffs have suffered the same injuries as the absent class members; (2) as a result of the same course of conduct; and (3) their claims are based on the same legal issues. *See Armbruster*, 2008 U.S. Dist. LEXIS 96288, at \*7 (finding typicality); *see also In re McDermott Int'l, Inc. Sec. Litig.*, No. 08 Civ. 9943 (DC), 2009 U.S. Dist. LEXIS 21539, at \*6 (S.D.N.Y. Mar. 6, 2009) (requiring only a "preliminary showing" of typicality and adequacy of representation). This does not require that the representative claims be

1 substantially identical to absent class members' claims; it only requires that the claims are  
 2 reasonably co-extensive with those of absent class members. *Hanlon v. Chrysler Corp.*,  
 3 150 F.3d 1011, 1020 (9th Cir. 1998). Thus, courts have repeatedly held that typicality is  
 4 satisfied in securities class actions when the class representative, like all other class  
 5 members, suffered damages as a result of purchasing the subject stock during the relevant  
 6 time period at prices that were artificially inflated by defendants' alleged false and  
 7 misleading statements. *See, e.g., Armbruster*, 2008 U.S. Dist. LEXIS 96288, at \*7.

8 Purcell's claims are typical of those of other class members. He purchased HQS  
 9 stock during the Class Period at prices artificially inflated by the misrepresentations and  
 10 omissions alleged in this action. Like other class members, Purcell suffered damages as a  
 11 result of his purchases of HQS stock. These shared claims satisfy Rule 23(a)(3)'s typicality  
 12 requirement because they are based on the same legal theory and arise from the same  
 13 events and course of conduct as the class claims.

14 The adequacy of representation requirement of Rule 23(a)(4) is satisfied when  
 15 counsel for the class is competent, the representative's interests are not antagonistic to  
 16 those of the absent class members, and it is unlikely that the action is collusive. Here,  
 17 Purcell is an adequate representative of the class for two reasons. First, Purcell's interests  
 18 are clearly aligned with the interests of the members of the class because, like other class  
 19 members, he paid artificially inflated prices for HQS stock due to Defendants' materially  
 20 false and misleading statements. There is no antagonism between Purcell's interests and  
 21 those of the putative class. *Armbruster*, 2008 U.S. Dist. LEXIS 96288, at \*7. Second,  
 22 Purcell has taken significant steps that demonstrate his willingness and ability to protect  
 23 the interests of the class: (1) he has executed a sworn certification detailing his Class  
 24 Period transactions; (2) he has timely moved this Court for appointment as lead plaintiff;  
 25 and (3) he has retained competent and experienced counsel to prosecute these claims. *See*  
 26 *id.* As discussed below, Purcell's proposed counsel is highly qualified, experienced, and



able to conduct this complex litigation in a professional manner. *See* Spurr Decl. Ex. D. Thus, Purcell satisfies the typicality and adequacy requirements of Rule 23 for the purposes of this motion.

**B. The Court Should Approve Purcell's Choice of Counsel**

The PSLRA provides that the lead plaintiff shall, subject to court approval, select and retain lead counsel. 15 U.S.C. § 78u-4(a)(3)(B)(v). A court should not disturb the lead plaintiff's choice of counsel unless necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). Purcell has selected the law firm of Chapin Fitzgerald Sullivan & Bottini LLP as Lead Counsel. The attorneys at Chapin Fitzgerald have substantial experience in prosecuting securities class actions. *See* Spurr Decl. Ex. D. Indeed, Mr. Bottini, one of the firm's partners, has been involved in a number of securities class actions in this District, including *In re Cell Therapeutics, Inc.*, No. 10-cv-0414-MJP (W.D. Wash.). Mr. Bottini is currently serving as lead counsel for the class in a multi-billion-dollar action involving a feeder fund to Bernard L. Madoff's Ponzi scheme, *In re Herald, Primeo, and Thema Funds Securities Litigation*, No. 09 Civ. 0289 (RMB) (S.D.N.Y.). Accordingly, the Court should approve Purcell's selection of Chapin Fitzgerald as lead counsel for the class.

**IV. CONCLUSION**

For the reasons set forth above, the Court should appoint Steve Purcell as Lead Plaintiff and Chapin Fitzgerald Sullivan & Bottini LLP as Lead Counsel.

Dated: June 27, 2011

Respectfully submitted,  
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